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CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 2951

Introduced by Assembly Member Goldberg

February 24, 2006

An act to amend Section 54999.1 of, to add Section 54999.7 to, and to add and repeal Section 54999.8 of, the Government Code, relating to local government.

LEGISLATIVE COUNSEL'S DIGEST

AB 2951, as amended, Goldberg. Capital facilities fees.

(1) Existing law authorizes a public agency that provides public utility service, as defined, to impose a capital facilities fee on any school district, county office of education, community college district, the California State University, the University of California, or state agency, subject to certain restrictions. Existing law defines the terms “capital facilities fee” or “capacity charge” as any nondiscriminatory charge to pay the capital cost of a public utility facility, and defines the term “nondiscriminatory” for these purposes.

This bill would revise the definition of the term “public utility service.” It would revise the definition of the term “capital facilities fee” to mean a nondiscriminatory connection fee, as defined, or a nondiscriminatory capacity charge, as defined, or both.

The bill would require a public agency that provides public utility service, ~~other than electricity or gas~~, to only charge a public agency fees, including rates, charges, or surcharges, ~~or fees for public utility service, other than electricity or gas~~, that do not exceed the reasonable cost of providing the public utility service ~~and that are~~. ~~The bill would require that a fee, including a rate, charge, or surcharge for any product, commodity, or service provided to a public agency, be determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, subject to specified criteria. The bill would provide that this requirement does these requirements do not apply to impositions or increases of capital facilities fees on a school district, county office of education, community college district, the California State University, the University of California, or a state agency.~~

The bill would, until January 1, 2010, require any judicial action or proceeding by a public agency that seeks a refund, or challenges the validity, of a fee, rate, charge, or surcharge, or increase, or any action by a public agency to validate an ordinance, resolution, or motion imposing or increasing any of these, to be commenced, as specified.

The bill would require a public agency providing public utility service to complete a cost of service study at least once every 10 years that addresses the cost of providing public utility service to public schools, as defined, to include specified components, thus imposing a state-mandated local program on such an agency.

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

(3) The bill would make specified declarations with respect to its provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 54999.1 of the Government Code is
2 amended to read:

3 54999.1. For purposes of this chapter:

4 (a) “Actual construction costs” includes the cost of all
5 activities necessary or incidental to the construction of a public
6 utility facility, such as financing, planning, designing, acquisition
7 of property or interests in property, construction, reconstruction,
8 and rehabilitation.

9 (b) “Capacity charge” means a one-time charge to recover the
10 costs of public utility facilities necessary to establish new or
11 expand existing public utility service to a public agency.

12 (c) (1) “Capital facilities fee” means a nondiscriminatory
13 connection fee, a nondiscriminatory capacity charge, or both.
14 “Capital facilities fee” does not include any other rate, charge, or
15 surcharge, or any capital component thereof.

16 (2) For purposes of this subdivision, “nondiscriminatory”
17 means that the fee does not exceed an amount determined on the
18 basis of the same objective criteria and methodology applicable
19 to comparable nonpublic users, and is not in excess of the
20 proportionate share of the cost of the public utility facilities of
21 benefit to the person or property being charged, based upon the
22 proportionate share of use of those facilities.

23 (d) “Connection fee” means a fee to recover the costs of the
24 physical facilities necessary to directly connect a public agency
25 facility to a public utility service provided by a public agency,
26 including, but not limited to, meters, meter boxes, and pipelines
27 to make the connection, and the actual cost of labor and materials
28 for the installation of those facilities.

29 (e) “Public agency” means the United States or any of its
30 agencies, the state or any of its agencies, the California State
31 University, the Regents of the University of California, a county,
32 a county office of education, a city, a school district, community
33 college district, or any other district, a public authority, or any
34 other political subdivision or public corporation of this state.

35 (f) “Public school” means the California State University, the
36 Regents of the University of California, a county office of
37 education, a school district, or a community college district.

(g) “Public utility facility” means a facility for the provision of water, light, heat, communications, power, or garbage service, for flood control, drainage or sanitary purposes, or sewage collection, treatment, or disposal.

(h) “Public utility service” means service for water, light, heat, communications, power, or garbage, or for flood control, drainage or sanitary purposes, or sewage collection, treatment, or disposal, provided by a public agency.

(i) “State agency” or “state” means any state office, department, division, bureau, board, or commission.

SEC. 2. Section 54999.7 is added to the Government Code, to read:

54999.7. (a) Any public agency providing public utility service may impose a fee, including a rate, charge, or surcharge, for any product, commodity, or service provided to a public agency, and any public agency receiving service from a public agency providing public utility service shall pay that fee so imposed. Such a fee for public utility service, other than electricity or gas, shall not be extended, imposed, or increased by any public agency providing public utility service unless it meets both of the following requirements: *electricity or gas, shall not exceed the reasonable cost of providing the public utility service.*

~~(1) Revenues derived from the fee shall not exceed the reasonable cost of providing the public utility service.~~

~~(2) The fee~~

(b) A fee, including a rate, charge, or surcharge, for any product, commodity, or service provided to a public agency, shall be determined on the basis of the same objective criteria and methodology applicable to comparable nonpublic users, based on customer classes established in consideration of service characteristics, demand patterns, and other relevant factors.

~~(b)~~

(c) A public agency providing public utility service shall complete a cost of service study at least once every 10 years that addresses the cost of providing public utility service to public schools. The study shall describe the methodology for the determination of cost responsibility, which may be identified by reference to appropriate industry rate making principles, including guidance associated with designing and developing water rates and charges issued by the American Water Works

1 Association or guidance associated with other comparable
2 industry principles recognized by public agencies providing
3 public utility service.

4 ~~(e)~~

5 (d) In addition to other notices required pursuant to state law
6 or local ordinance or rule, whenever a public agency that
7 provides public utility service holds a public meeting to establish
8 or increase any rate, charge, surcharge, or fee, that public agency
9 shall provide a written notice of the meeting not less than 60 days
10 prior to the date of the public meeting to any public agency that
11 has filed a written request for such a notice with either the clerk
12 of the governing body or with any other person designated by the
13 governing body to receive these requests.

14 ~~(d)~~

15 (e) Upon request of any affected public agency made not less
16 than 30 days prior to the date of the public meeting to establish or
17 increase any rate, charge, surcharge, or fee, a public agency that
18 provides public utility service shall provide the affected public
19 agency with the data and proposed methodology for establishing
20 or increasing the rate, charge, surcharge, or fee. The data and
21 proposed methodology may be provided during a meeting of staff
22 or other representatives of each agency.

23 ~~(e)~~

24 (f) This section shall not apply to impositions or increases of
25 capital facilities fees subject to Section 54999.3.

26 SEC. 3. Section 54999.8 is added to the Government Code, to
27 read:

28 54999.8. (a) Any judicial action or proceeding by a public
29 agency that seeks a refund of a fee, rate, charge, or surcharge, or
30 increase in any of those costs, or that challenges the validity of a
31 fee, rate, charge, or surcharge, or increase, imposed on or after
32 January 1, 2007, pursuant to this chapter, shall be commenced
33 within 120 days of the effective date of the imposition of the fee,
34 rate, charge, or surcharge, or increase.

35 (b) Any action by a public agency under this chapter to
36 validate an ordinance, resolution, or motion imposing or
37 increasing a fee, rate, charge, or surcharge shall be in accordance
38 with Chapter 9 (commencing with Section 860) of Title 10 of
39 Part 2 of the Code of Civil Procedure. However, no action by a
40 public agency imposing or increasing the fee, rate, charge, or

1 surcharge shall be commenced any earlier than 120 days from the
2 effective date of the imposition of the fee, rate, charge,
3 surcharge, or increase.

4 (c) In any judicial action or proceeding brought pursuant to
5 this section, the public agency imposing or increasing the fee,
6 rate, charge, or surcharge shall have the burden of showing that it
7 was established pursuant to Section 54999.3 or Section 54999.7.

8 (d) This section shall remain in effect only until January 1,
9 2010, and as of that date is repealed, unless a later enacted
10 statute, that is enacted before January 1, 2010, deletes or extends
11 that date.

12 SEC. 4. No reimbursement is required by this act pursuant to
13 Section 6 of Article XIII B of the California Constitution because
14 a local agency or school district has the authority to levy service
15 charges, fees, or assessments sufficient to pay for the program or
16 level of service mandated by this act, within the meaning of
17 Section 17556 of the Government Code.

18 SEC. 5. The amendments made to Section 54999.1 of, and
19 the addition of Sections 54999.7 and 54999.8 to, the Government
20 Code by this act are not intended to affect any litigation
21 involving public utility services provided prior to January 1,
22 2007, brought prior to or subsequent to that date. Nothing in the
23 legislative history of the amendments or additions made by this
24 act should be construed as any indication of the meaning of the
25 law as it existed prior to the effective date of the amendments
26 and additions made by this act.